

SUBCHAPTER C : ACTION BY EXECUTIVE DIRECTOR
§§50.31, 50.33, 50.35, 50.37, 50.39, 50.41, and 50.43
Effective May 20, 1997

§50.31. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to applications for new permits, or to renew, modify, amend, correct, endorse, or transfer permits and to applications seeking orders that have the effect of issuing, renewing, modifying, amending, or transferring permits. Except as provided by subsection (c) of this section, this subchapter applies to:

- (1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);
- (2) appointments to the board of directors of districts created by special law;
- (3) certificates of adjudication;
- (4) certificates of convenience and necessity;
- (5) district matters under Chapters 49 - 66 of the Texas Water Code;
- (6) districts' proposed impact fees, charges, assessments, or contributions approvable under Local Government Code, Chapter 395;
- (7) extensions of time to commence or complete construction;
- (8) industrial and hazardous waste permits;
- (9) municipal solid waste permits;
- (10) on-site waste water disposal system permits;
- (11) radioactive waste or radioactive material permits or licenses;
- (12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;
- (13) underground injection control permits;

- (14) water rights permits;
- (15) wastewater permits;
- (16) weather modification measures permits;
- (17) driller licenses under Texas Water Code, Chapter 32;
- (18) pump installer licenses under Texas Water Code, Chapter 33;
- (19) irrigator or installer registrations under Texas Water Code, Chapter 34; and
- (20) municipal management district matters under Local Government Code, Chapter 375.

(c) This subchapter does not apply to:

- (1) air quality standard permits under Chapter 116 of this title;
- (2) air quality permits under Chapter 122 of this title (relating to Federal Operating Permits);
- (3) air quality standard exemptions;
- (4) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;
- (5) district matters under Texas Water Code, Chapters 49 - 66, as follows:
 - (A) an appeal under Texas Water Code, §49.052 by a member of a district board concerning his removal from the board;
 - (B) an application under Texas Water Code, Chapter 49, Subchapter K, for the dissolution of a district;
 - (C) an application under Texas Water Code, §49.456 for authority to proceed in bankruptcy;
 - (D) an appeal under Texas Water Code, §54.239, of a board decision involving the cost, purchase, or use of facilities;
 - (E) an application for the creation of a district; or
 - (F) an application for approval to impose a standby fee;

(6) emergency or temporary orders or temporary authorizations;

(7) actions of the executive director under Chapters 101, 111, 112, 113, 114, 115, 117, 118, and 119 of this title (relating to General Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; Control of Air Pollution Episodes; and Control of Air Pollution From Carbon Monoxide);

(8) all municipal solid waste facilities authorized to operate by registration under Chapter 330 of this title (relating to Municipal Solid Waste);

(9) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting);

(10) concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);

(11) impact fee petitions under Local Government Code, Chapter 395; and

(12) interwatershed transfers under Texas Water Code, §11.085.

(d) Notwithstanding subsections (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.39(b)-(f) of this title (relating to Motion for Reconsideration) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

Adopted April 16, 1997
Derived from §263.1, §263.8, and New

Effective May 15, 1997

§50.33. Executive Director Action on Application.

(a) The executive director may act on an application subject to this subchapter if:

(1) public notice has been issued as required by law and commission rules;

(2) the application meets all relevant statutory and administrative criteria;

(3) the application does not raise new issues that require the interpretation of commission policy;

(4) the executive director's staff and public interest counsel do not raise objections; and

(5) the application is uncontested because:

(A) no timely hearing requests are filed with the chief clerk;

(B) the applicant and the persons who filed timely requests have agreed in writing to the action to be taken by the executive director; or

(C) any timely requests have been withdrawn in writing or have been denied.

(b) If the executive director acts on an application the chief clerk shall mail to the applicant, the public interest counsel, and to other persons who timely filed public comment in response to public notice, notice of the action, any response to public comment under §55.25 of this title (relating to Public Comment Processing), and an explanation of the opportunity to file a motion under §50.39 of this title (relating to Motion for Reconsideration), if applicable. The chief clerk need not mail to persons submitting public comment who have not provided a return mailing address. The chief clerk may mail the information to a representative group of persons when a substantial number of public comments have been submitted. If there were timely filed hearing requests that the commission denied, the chief clerk should also mail to the persons who timely filed hearing requests.

(c) If an application does not meet the requirements of subsection (a) of this section, the executive director shall refer the application to the chief clerk. The chief clerk shall schedule the application for consideration and action by the commission.

Adopted April 16, 1997
Derived from §263.2 and §263.9

Effective May 15, 1997

§50.35. Effective Date of Executive Director Action.

A permit or other approval is effective when signed by the executive director.

Adopted May 8, 1996
Derived from §263.4 and §263.10

Effective June 6, 1996

§50.37. Remand for Action by Executive Director.

At any time during the processing of an application, if all timely hearing requests concerning the application are withdrawn or denied, the commission or the general counsel, or the judge if SOAH holds jurisdiction over the application, may remand the application to the executive director. If the application has been scheduled for a commission meeting, the chief clerk shall remove it from the commission's agenda.

Adopted April 16, 1997
Derived from §263.5 and §263.11

Effective May 15, 1997

§50.39. Motion for Reconsideration.

(a) The applicant, public interest counsel or other person may file with the chief clerk a motion for reconsideration of the executive director's action on an application.

(b) A motion for reconsideration must be filed no later than 20 days after the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant.

(c) An action by the executive director under this subchapter is not affected by a motion for reconsideration filed under this section unless expressly ordered by the commission.

(d) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for reconsideration and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant.

(e) Disposition of motion.

(1) Unless an extension of time is granted, if a motion for reconsideration is not acted on by the commission within 45 days after the date the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant, the motion is denied.

(2) In the event of an extension, the motion for reconsideration is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant.

(f) Section 80.271 of this title (relating to Motion for Rehearing) and Texas Government Code, §2001.146, regarding motions for rehearing in contested cases do not apply when a motion for reconsideration is denied by commission action or under subsection (e) of this section and no motions for rehearing shall be filed. If applicable, the commission decision may be subject to judicial review under Texas Water Code, §5.351, or the Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

Adopted April 16, 1997

Effective May 15, 1997

Derived from §263.6, §263.12, and New

§50.41. Eligibility of Executive Director.

This section is effective upon delegation of national pollutant discharge elimination system (NPDES) permit authority. The executive director may issue Texas pollutant discharge elimination system (TPDES) permits or other TPDES-related approvals only if he or she does not receive, and has not during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(1) For the purposes of this section:

(A) "Significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement pension, or similar arrangement.

(B) "Permit holders or applicants for a permit" does not include any department or agency of a state government, such as a Department of Parks or a Department of Fish and Wildlife.

(C) "Income" includes retirement benefits, consultant fees, and stock dividends.

(2) For purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

Adopted April 16, 1997
Derived from §263.7

Effective May 15, 1997

§50.43. Withdrawing the Application.

Upon a request by the applicant at any time before the application is referred to SOAH, the executive director shall allow the withdrawal of the application and shall file a written acknowledgment of the withdrawal with the chief clerk. If the application has been scheduled for a commission meeting, the chief clerk shall remove it from the commission's agenda. The agency may return to the applicant the classified or confidential portion of the application under §1.5(d) of this title (relating to Records of the Agency). For purposes of this rule, an application is referred to SOAH when the commission votes during a public meeting for referral or when the executive director or the applicant file a request to refer with the chief clerk under §55.26 of this title (relating to Hearing Request Processing).

Adopted April 16, 1997

Effective May 15, 1997

§50.45. Corrections to Permits.

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits). The executive director, on his own motion or at the request of the permittee, may make a nonsubstantive correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue nonsubstantive permit corrections under this section:

- (1) to correct a clerical or typographical error;
- (2) to change the mailing address of the permittee, if updated information is provided by the permittee;
- (3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;
- (4) to describe more accurately the location of the area certificated under a certificate of convenience and necessity;
- (5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;
- (6) to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;
- (7) to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;
- (8) to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;
- (9) to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or
- (10) to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.

Derivation Table
Chapter 50 - Action on Applications
Subchapter C : Action by Executive Director

Rule Log No. 95123-263-AD
Adopted May 8, 1996
Effective June 6, 1996

This table is to be used to track sections after rule revisions. The column on the left should list the sections after the revision. The column on the right should list where the section was prior to the revision.

New Section	Old Section
50.31 (a)	new
50.31 (b)	263.1 (a)
50.31(c)	263.1 (b)
50.31 (d)	263.1 (c), 263.8 (b)
50.33	263.2, 263.9
50.35	263.4 (b), 263.10
50.37	263.5, 263.11
50.39 (a)	263.6 (a), 263.12 (a)
50.39 (b)	263.6 (b), 263.12 (b)
50.39 (c)	263.6 (d), 263.12 (e)
50.39 (d)	New
50.39 (e)	263.6 (d), 263.12 (d)
50.41	263.7

Derivation Table
Chapter 50 - Action on Applications
Subchapter C : Action by Executive Director

Rule Log No. 96174-050-AD
Adopted April 16, 1997
Effective May 20, 1997

This table is to be used to track sections after rule revisions. The column on the left should list the sections after the revision. The column on the right should list where the section was prior to the revision.

New Section	Old Section
50.45 (a)	291.108, 295.158 (d), 305.65
50.45 (b)	291.108, 295.158 (c)(2)(A), 297.62, 305.65
50.45 (c)	new